In the High Court of Uttaranchal, at Nainital.
Government Appeal No. 1120/2001
(Old No. 1739/1986)

The State of U.P. ..Appellant.

Versus

Rajendra Dutt S/o Narain Dutt
R/o Ediwal Slyun, P.S. Pauri,
District Pauri Garhwal ....Respondent.

Sri Nandan Arya, learned A.G.A. for the appellant.
Sri S.C. Bhatt, learned counsel for the respondent.

Hon'ble B.C. Kandpal, J.

This appeal has been preferred by the State against the judgment and order dated 18-3-1986 passed by the Munsif Magistrate, Pauri Garhwal, in Criminal Case No. 42/84 State Versus Rajendra Dutt, U/S 409 I.P.C., acquitting the accused/respondent Rajendra Dutt.

2- Brief facts giving rise to this appeal, as emerged out from the record, are that on 20-3-1978, F.I.R. was lodged against the members of Sadhan Sahkari Samiti Bramathi Patti Eidwal Syun, Pauri Garhwal and the allegation against the respondent was that he being the Sabhapti of the Samiti misappropriated Rs. 230/-. The investigation was done in the matter by S.I.B. Cooperative Cell and after completion of the investigation charge sheet was submitted against the accused/respondent. The trail Magistrate framed charge pleaded not guilty and claimed his trail. Thereafter opportunity was afforded to the prosecution to adduce its evidence but for about two years the evidence was not produced before the trail court. Ultimately on 18-3-1987 last opportunity was given to the prosecution, but prosecution/S.I.B. Cooperative Cell was not able to produce evidence. Hence the trail Magistrate rejected

the application filed on behalf of the prosecution and closed the prosecution evidence and acquitted the accused/respondent from the charge U/S 409 I.P.C.

3- Feeling aggrieved by the impugned judgment and order, the State has filed this appeal before the Allahabad High Court, which after creation of new State has been transferred to this Court.

4- I have heard learned A.G.A., learned counsel for the respondent and perused the record.

5- Perusal of record shows that sufficient opportunity was afforded to the prosecution to product its evidence but the prosecution was not able to prove the charge U/S 409 I.P.C. levelled against the accused/respondent by adducing any evidence. The accused/respondent has been regularly attending the court on the dates fixed in the case. In absence of any evidence before him, the learned Magistrate had no option but to acquit the respondent/accused. I do not find any ground to interfere in the impugned judgment and order passed by the court below, acquitting the accused/respondent.

6- The appeal fails and is liable to be dismissed.

7- Accordingly the appeal is dismissed.

(B.C. Kandpal, J.)

Dated: 19-7-2006
ISB